

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE SECRETARY OF STATE

In the Matter of
the Petition of
Voter Residency
of Arne Engstrom

FINDINGS OF FACT,
CONCLUSIONS-AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Bruce D. Campbell on October 26, 1992, at 10:30 a.m. in Courtroom 1 of the Sherburne County Government Center, 13880 Highway 10 Northwest, Elk River, Minnesota.

Appearances: Ronald G. Black, Terpstra, Black, Brandell, Kaminsky & Hoffman, Attorneys at Law, 913 Main Street, Elk River, Minnesota 55330, appeared on behalf of the Voter, Arne Engstrom (Voter, Respondent or Mr. Engstrom); John E. MacGibbon, Attorney at Law, 321 Lowell, ELk River, Minnesota 55330, appeared on behalf of the Challenger, Gary "Jake" Jacobson; and Thomas D. Hayes, Sherburne County Attorney, and Kathleen A. Heaney, Assistant Sherburne County Attorney, 13880 Highway 10, P.O. Box 318, Elk River, Minnesota 55330, appeared on behalf of the Sherburne County Auditor, E. Dale Palmer.

The record of the proceeding closed at the conclusion of the hearing on October 26, 1992.

This Report is a recommendation, not a final decision. The Secretary of State will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Parties or their attorneys may file exceptions to this Report on or before 4:30 p.m. on October 29, 1992. Such written exceptions must be timely filed with Joseph Mansky, Director, Elections Division, Office of the Secretary of State, 180 State Office Building, 100 Constitution Avenue, St. Paul, Minnesota 55155. Exceptions may be personally delivered or telefaxed to Mr. Mansky. His telefax number is (612) 296-9073.

Pursuant to Minn. Stat. 201.195 (1990), the final decision of the Secretary of State must be communicated to the Sherburne County Auditor on or before the date of the next general election, November 3, 1992.

STATEMENT OF ISSUE

The issue to be determined in this proceeding is whether Mr. Engstrom has his residence in the Elk River precinct so that he would be qualified to cast his ballot in the Elk River precinct under Minn. Stat. 201.016 and 200.031

(1990).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Arne Engstrom lives with his family at 20800 Meadowvale Road in Sherburne County. All of the official records of the county and local authorities reflect that residence address as being within Elk River. See, e.g., Ex. 14, p. 1. The 22.62-acre farmstead contains a house, a barn, a garage, a recreation wall and several smaller out-buildings. The farmstead property has an L-shaped driveway north of the home. A portion of the driveway runs east past the home and connects with County Road 32. Another portion of the egress and ingress driveway runs north of the residence to 209th Avenue Northwest.

2. Mr. Engstrom also owns an additional 80 acres which he had historically farmed to support cattle. The farmstead property and other acreage has been in the Engstrom family since approximately 1899, when it was purchased by Mr. Engstrom's grandfather.

3. Mr. Engstrom has always believed that the dividing line between Big Lake Township and Elk River was the western edge of his north/south driveway shown in Exhibit No. 12. It had been the historical belief of his ancestors that those portions of his property west of the north/south driveway extended were in Big Lake Township and the remainder of the farmstead, including the house, was in Elk River. The line between Section 13, Township 33 North, Range 27 West and Section 18, Township 33 North, Range 26 West is an election precinct line for purposes of Minn. Stat. 201.016, subd. 1 (1990). That boundary also divides Big Lake Township from the City of Elk River.

4. Since approximately 1972, Mr. and Mrs. Engstrom have resided in the residence at 20080 Meadowvale Road. Believing that their residence was in Elk River for purposes of Minn. Stat. 201.016, Mr. Engstrom and his wife have registered to vote in Elk River since the early 1970s and have consistently voted in the Elk River precinct. Sy,, Ex. 8. Mr. Engstrom is currently registered to vote in the Elk River precinct and he intends to cast his ballot in the general election at that precinct.

5. On October 9, 1992, Mr. Gary "Jake" Jacobson filed a Petition challenging Mr. Engstrom's voter registration in the Elk River precinct. Ex. 3. The petition alleges that Mr. Engstrom's residence for purposes of voting is in the Big Lake Township precinct, rather than the Elk River precinct. Ex. 3.

6. On October 12, 1992, a copy of the Petition was served upon the Voter, pursuant to Minn. Stat. 201.195, subd. 1 (1990).

7. On October 12, 1992, the Challenger and the Voter were personally served with notice of a hearing on the Petition to occur before the Sherburne County Auditor, Mr. E. Dale Palmer. Ex. 4; Ex. 5; Ex. 6.

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A hand-drawn depiction of the location of the house and L-shaped driveway is contained in Exhibit No. 11. A general site drawing of the buildings on Mr. Engstrom's farmstead is contained in Exhibit No. 12.

8. On October 13, 1992, a hearing authorized by Minn. Stat. 201.195, subd. 1 (1990), was held before the Sherburne County Auditor.

9. On September 28, 1992, Mr. Daniel G. Nickols, Sherburne County Surveyor, made a survey of the 22.62-acre farmstead property of Mr. Engstrom. The survey locates the residence dwelling on the property with reference to the line between Section 18 and Section 13, which is also 3 the precinct line between the Big Lake precinct and the Elk River precinct. For purposes of the survey, the current positions of the Sherburne County cast iron monuments in place at the west quarter corner of Section 18, Township 33 North, Range 26 West of the Fourth Principal Meridian and at the Southeast corner of Section 18, Township 33 North, Range 26 West of the Fourth Principal Meridian were used. No independent effort was made by Mr. Nickols to verify the correctness of the locations of those two cast iron monuments in place. The monuments were correctly replaced in the 1970s by the Sherburne County Surveyor, pursuant to a statutorily authorized program. Having been so placed by the Sherburne County Surveyor pursuant to specific authorization, the monuments are prima facie accurate, in the absence of contrary evidence.

10. There is no evidence in the record that the cast iron monuments referenced in the previous Finding are not appropriately placed for purposes of the conduct of a current, accurate survey showing the location of the Engstrom dwelling on the farmstead property with reference to the precinct boundary line.

11. The survey prepared by Mr. Nickols locates only the Engstrom dwelling on the farmstead property. That survey shows that only a small portion of the dwelling along the east wall of the building, and a chimney, are located in Elk River. The total square footage of the dwelling measured from exterior wall to exterior wall is 1,530.7 square feet. Ex. 10. The survey shows that 1,502.49 square feet of the area of the dwelling, or 98.16%, is located in Big Lake Township. Ex. 10. Approximately 28.21 square feet, or 1.84% of the total house is located in Elk River. The northernmost portion of that part of the home that is in Elk River is 98/100ths of one foot wide and the southern portion of the dwelling that is within Elk River is .53/100ths of a foot wide. Approximately ten of the 28.21 square feet of the part of the

home that is within Elk River is taken up by a chimney. A portion of the part of the home within Elk River is also taken up by the thickness of the wall, because measurements by the surveyor were taken to the exterior of the stucco building walls. Ex. 10.

12. Exhibit 18 shows a floor plan of the first and second floor of the Engstrom home. Page 1 of Exhibit 18 shows the second floor of the home and page 2 shows the first floor of the dwelling. The boundary line between Elk

2A transcript of that pruceeding, which was not accorded evidentiary status in this proceeding because the testimony was unsworn and the transcript shows inaudible remarks, is contained in Ex. 2. The findings of the Auditor and his conclusion are contained in Ex. 1.

3A copy of that survey is contained in Exhibit 10.

River and Big Lake Township runs north and south along the eastern portion of the home. Hence, on the first floor, all living areas except a small portion of the living room and chimney are located in Big Lake Township. On the second floor of the dwelling, all living areas except a small portion of the east wall of the master bedroom, and the chimney are located in Big Lake Township. Ex. 18.

13. The survey prepared by the Sherburne County Surveyor does not locate other buildings on the farmstead. Exhibit 12 shows the location of other significant buildings on the Engstrom farmstead. As shown on that diagram, the barn and several other out-buildings are located in Elk River. The garage and several other out-buildings are located in Big Lake Township.

14. Mr. Engstrom derives his principal livelihood from contracting. In the barn, which is located in Elk River, he maintains a machine shop to repair his somewhat antiquated farm machinery. He also stores equipment used in his contracting business in the Elk River portion of the farmstead. When Mr. Engstrom is home and not asleep, he spends a significant portion of his time in that portion of the farmstead which is within Elk River.

15. Both parts of the L-shaped driveway may provide ingress and egress to the property. Mr. Engstrom, however, considers the east/west portion of the L-shaped driveway to be his principal route to and from the property. The Elk River portion of the L-shaped driveway is always kept free of snow during the winter. Moreover, the Voter receives his mail delivery at the Elk River end of the L-shaped driveway and his children catch their school bus at the Elk River end of the L-shaped driveway. Mr. Engstrom's children attend Elk River schools.

16. Between 1947 and 1972, the farmstead property was rented to persons other than members of the Engstrom family. Between the time the home was built in 1899 and the current date, approximately 32 individuals qualified to

vote have resided in the dwelling. All of those voters registered and cast their ballot in the Elk River precinct. No resident of the premises has voted in the Big Lake precinct.

17. Mr. Engstrom has always paid taxes on his farmstead property to Sherburne County, reflecting an assessment of the property and home within Elk River. Ex. 14; Ex. 7; Ex. 15. Acreage other than the farmstead is taxed based on an assessment within Big Lake Township.

18. Mr. Engstrom's major source of income is from his contracting business, not his somewhat marginal farming operation. Sometime in the early 1980s, Mr. Engstrom sold a sizable herd of cattle that he had been raising on the property since 1972. The cattle were housed and fed on the Elk River portion of the farmstead. The additional acreage owned by the Voter in Big Lake Township was historically used to raise hay for cattle feed. The additional farm acreage, beyond the farm homestead, shown in Ex. 11, is now used to grow hay, which is sold to other area farmers.

19. Over the years, Mr. Engstrom has made major improvements to the dwelling located on the farmstead. On all such occasions, he has obtained a building permit for the construction from Elk River. 511, Ex. 17. In 1976, Mr. Engstrom entirely rebuilt the western portion of his home, including the den, dining room and kitchen area. The original walls of the western portion

of the house were entirely replaced. At that juncture, if Mr. Engstrom had known the true location of the boundary line he would have reconstructed his home on the Elk River side of the line. At the time of the major reconstruction of the western portion of his home in 1976, he believed that the north/south driveway was the appropriate boundary line and no city official or employee informed him that the historical understanding was erroneous.

20. When Mr. Engstrom's grandfather built the home in 1899, it was his understanding that the residence was located in Elk River Township. Mr. Engstrom's father was born in the residence and, until he was 26 years of age, Mr. Engstrom's father resided with his parents at that location. It was the universal understanding of both Mr. Engstrom's grandparents and his parents that the house was located in Elk River.

21. Mr. Engstrom purchased the residence from his parents in approximately 1972 and began occupying the residence. Since that time, all of Mr. Engstrom's significant contacts have been with the City of Elk River, rather than Big Lake. Mr. Engstrom, who plays a musical instrument, has served in the Elk River community band. The Voter's church is located in Elk River. Mr. Engstrom has been active in church affairs and has assumed positions of leadership within the congregation. He does not and has not attended church in Big Lake.

22. Mr. Engstrom has also been active in local Elk River politics. In 1977 he was elected to the Elk River Town Board. After Elk River Township consolidated with the City of Elk River, Mr. Engstrom ran for the Elk River City Council. He served on the Elk River City Council between January of 1978 and December of 1986. Upon leaving the City Council, Resolution 87-7 was passed. The resolution honored his long and distinguished service on the Elk River City Council. Ex. 16. Serving on the Elk River City Council required residence in Elk River. As part of his service on the City Council, Mr. Engstrom was required to execute an affidavit of candidacy, swearing that he resided in the City of Elk River. See, Ex. 16. All members of the City Council and Elk River city government knew that Mr. Engstrom resided at 20080 Meadowvale Road, his current residence.

23. Besides numerous social, political and community based contacts in Elk River, Mr. Engstrom is also active in the Elk River Grange and an Elk River Cemetery Association.

24. Mr. Engstrom's Minnesota driver's license lists his address on Meadowvale Road and shows Elk River as the location of that residence.

25. Mr. Engstrom and his wife, Marilyn K. Engstrom, intend to vote at the next general election in Elk River. It is Mr. and Mrs. Engstrom's joint intention that they be considered residents of the Elk River precinct for voting purposes.

Based upon the Foregoing Findings of Fact, the Administrative Law Judge makes the following

CONCLUSIONS

1. The Administrative Law Judge and the Secretary of State have jurisdiction in this matter pursuant to Minn. Stat. 201.195, subd. 2, 3 and 14.50 (1990).

2. The Petition of the Voter to review the initial decision of the Sherburne County Auditor was timely filed pursuant to Minn. Stat. 201.195, subd. 2 (1990).

3. The Notice of Hearing in this case was proper as to form and was properly served.

4. All relevant substantive and procedural requirements of law or rule have been fulfilled and, therefore, this matter is properly before the Administrative Law Judge.

5. The Challenger in this proceeding, Mr. Jacobson, has the burden of establishing any facts at issue in determining the propriety of disqualifying Mr. Engstrom from voting in the Elk River precinct by a preponderance of the evidence. Minn. Rule pt. 1400.7300, subp. 5 (1991).

6. The survey made by the Sherburne County Surveyor, Mr. Dan Nickols, on September 28, 1992, is appropriate for use in this proceeding to determine the location of the Engstrom dwelling on the farmstead property in relationship to the voting precinct line.

7. It is also appropriate to consider those auxiliary structures and out-buildings not located on the survey and shown in Ex. 12 to determine whether Mr. Engstrom resides in Elk River for purposes of Minn. Stat. 201.016, subd. 1 (1990).

8. The word "residence", as used in Minn. Stat. 200.031, 201.16, subd. I and 201.195 (1990), means and refers to the domicile of a voter.

9. In determining the domicile of Mr. Engstrom, it is appropriate to give primary consideration to the physical location of his dwelling place.

10. When the dwelling place of an individual is physically situated so as to intersect a boundary line, and the portion of the house on one side of the line is sufficient to constitute a habitation by itself while the other portion is not, the portion sufficient to constitute a habitation by itself will be considered the domicile of the residents of the structure.

11. All but a minute portion of the Engstrom residence is physically located within Big Lake Township.

12. As a consequence of Conclusions 6-11, supra, Mr. Engstrom is a resident of Big Lake for purposes of Minn. Stat. 201.016, subd. 1, Minn. Stat. 200.031 and Minn. Stat. 201.195 (1990).

13. Any Finding of Fact more properly termed a Conclusion and any Conclusion more properly termed a Finding of Fact is expressly adopted as such.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS THE RECOMMENDATION of the Administrative Law Judge to the Secretary of State that she advise the County Auditor of Sherburne County, Mr. E. Dale Palmer, that the Voter, Arne Engstrom, is not a resident of the Elk River precinct for purposes of Minn. Stat. 201.016, Minn. Stat. 200.031 and Minn. Stat. 201.195, subd. 2 (1990). It would be appropriate, therefore, for the County Auditor of Sherburne County, Mr. E. Dale Palmer, to be advised by the Secretary of State to strike from the election records maintained by the Auditor the registration of Mr. Engstrom in the Elk River precinct.

Dated this 28th day of October, 1992.

BRUCE D. CAMPBELL
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Linda Baker
AAA Court Reporting
4629 - 35th Avenue South
Minneapolis, MN 55406

MEMORANDUM

This proceeding concerns the proper interpretation of Minn. Stat. 201.016 (1990) and Minn. Stat. 200.031 (1990). Mr. Engstrom may only vote in the precinct within which he "resides" as that term is defined in Minn. Stat. 200.031(a) (1990). Minn. Stat. 201.016, subd. 1 (1990).

Minn. Stat. 200.031 (1990), in relevant part, provides:

Residence shall be determined in accordance with the following principles, so far as they may be applicable to the facts of the case:

(a) the residence of an individual is in the precinct where the individual's home is located, from which the individual has no present intention of moving. and to which, whenever the individual is absent, the individual intends to return;

(h) the residence of a single individual is in the precinct where the individual lives and usually sleeps

Minn. Stat. 200.031 (1990) does not address the issue of residency when the dwelling of an individual or the real property associated with the dwelling place is physically located in more than one precinct.

In determining the place of residence of an individual when the individual's property and/or dwelling place are intersected by a voting precinct line, resort may be had to legal principles associated with the determination of domicile. The definition of "residence" contained in Minn. Stat. 200.031(a) (1990) is the legal equivalent of "domicile", as defined by the Minnesota Court. In *re Smith's Estate*, 242 Minn. 85, 64 N.W.2d 129 (1954); *Miller's Estate v. Commissioner of Taxation*, 240 Minn. 18, 59 N.W.2d 925 (1953); *In-re Quale*, 213 Minn. 421, N.W.2d 153 (1943). Generally, use of the word "residence" in election law is the legal equivalent of domicile. *Dietz-v.-City of Medora*, 333 N.W.3d 702 (N.D. 1983); *Application of Davey*, 281 App. Div. 137, 120 N.Y.S.2d 450 (3d Dept. 1952).

When the boundary line between two localities passes through the physical dwelling of a person whose domicile is at issue, if the portion of the habitation on one side of a line is sufficient to constitute a habitation by itself, while the other portion is not, the first locality will be considered the domicile of the individual. *Gray v. O'Banion*, 23 Cal. App. 468, 478, 138 P. 977, 981 (Cal. App. 1914); *Jenkins v. Reeden* 48 Me. 386, 387 (1800); *Abington v.-North Bridgewater*, 23 Pick (Mass.) 170 (1839); *East Montpelier v. Barre*, 79 Vt. 5 & - 6 'RPLFLOH 25 Am. Jur. 2d, Domicile & - 'RPLFLOH 56. It is appropriate, in determining domicile, to consider principally the location of the dwelling unit and not appurtenant real property. *Application of Davey*, 281 App. Div. 137, 120 N.Y.S.2d 450 (3d Dept. 1952).

The case law dealing with the determination of domicile or legal residence where a boundary line intersects a dwelling unit has been specifically applied to voter qualification. In *Gray v. O'Banion*, 23 Cal. App. 468, 478, 138 P. 977, 979 (Cal. App. 1914), the issue concerned the ability of a person to vote in a particular district when the majority of his house was on one side of the district line and a smaller portion was in a second district. The court held, applying principles of the law of domicile, that the elector was properly allowed to vote in that district in which the major portion of his dwelling was situated. The court also held that the voter did not have the right to elect the precinct in which he would vote. In making its decision, the court relied upon the precedent previously cited relating to the general rule for determining domicile when a dwelling unit is partially in two political subdivisions.

Domicile or legal residence is initially a function of location and is not controlled by a person's desire or choice to be considered within one jurisdiction rather than another. *Application of Davey supra Gray v.*

O'Banion, *supra*; Blain, v. Murphy, 265 F. 324 (D. Mass. 1920).

A number of Attorney General opinions in Minnesota appear to rely more heavily on voter choice in determining the appropriate precinct than does the law of domicile or legal residence. In Op. Atty. Gen. 169-P, November 12, 1917 (1918 Atty. Gen. Reports No. 253), the Attorney General stated that an individual whose home was on the school district line, so that one door opened upon one school district and the other upon another school district, had a right to select the district that would be considered his residence district. A similar result was reached in OP, Atty.-Gen. 169-P, January 17, 1944, which involved a home on the boundary between two school districts. In that opinion, the Attorney General stated that the parents should be able to select the school district of residence. See- also, Op. Atty Gen. 169-P, December 27, 1949.

The Attorney General has, however, recognized the propriety of applying the law of domicile cited by the Administrative Law Judge to a situation in which a larger portion of the dwelling was on one side of the boundary line. Op.-Atty Gen 169-P, September 25, 1951. In Op. Atty Gen 190-J-1, February 14, 1936, where the question was residence for voting purposes of an individual whose house was partly in one municipality and partly in another, the Attorney General also recognized the application of the law of domicile when most of a dwelling was situated on one side of a boundary line and only a small portion was on the other side of the line. The Attorney General cited with approval the statement of the general rule contained in K. Kennan, Residence & Domicile 47 (1 934) .

The previous decisions of the Attorney General may be fairly interpreted to allow choice where there is essentially an equal division of the dwelling place by the boundary line and it is unclear which portion of the dwelling unit "constitutes a habitation by itself, or in which the occupant mainly performs the offices characterizing his home 28 C.J.S. Domicile, 14 (1941).

The Voter relies upon Op. Atty, Gen., March 27, 1922, relating to the right of a voter to vote in a particular district. While that opinion places primary emphasis on the intention of the voter, it does not involve a situation in which a dwelling unit is located on a boundary line. In that opinion, the Attorney General states that residence for purposes of voting is composed of two things: "first, domicile; second, intention; that is, in order to establish a residence the concurrence of two things are required: the act of residing, coupled with the intention to do so." The Attorney General does not state that one may establish domicile strictly by intention. Rather, one must first have a sufficient habitation to claim domicile or legal residence and then must have an intention to make it so. The opinion relied upon does not state that the rules of domicile are in any way abrogated because of the Intention of the voter. The Administrative Law Judge therefore, does not find that the Attorney General's opinion rel'ed upon by the Voter supports his position.

The Voter also relies upon Dietz v. city of Medora, 333 N.W.2d 702 (N.D. 1983), as establishing the rule that residence for voting purposes is

primarily a matter of intention. The proper interpretation of Dietz_v.
City

Qf Medora, supra, however, is similar to the 1922 Attorney General's opinion
relied upon by the Voter. In the case cited, the city officials
unquestionably originally had a legal residence or domicile within the city
of
Medora. The issue was whether they intended to abandon that legal residence

or domicile in the city of Medora by also acquiring homes in other North Dakota cities. The court held that no such intention had been demonstrated, based on the officials continuing significant contacts with the city of Medora. Dietz v. City of Medora, supra, does not hold that a legal residence or domicile may be established solely by significant contacts. There is nothing in Dietz v. city of Medora, supra, which would negate application of the general rule of domicile previously stated.

Applying the principles of domicile previously discussed to this proceeding, the Administrative Law Judge finds that Mr. Engstrom is not a resident of the Elk River precinct. Prime reliance must be placed on the location of the dwelling unit on the property. The survey performed by the Sherburne County Surveyor affirmatively establishes that approximately 98% of the home is in Big Lake. see, Ex. 10. Under the rule of law previously stated, the legal residence of Mr. Engstrom for voting purposes is Big Lake.

Mr. Engstrom's intentions, while not wholly irrelevant, do not establish the necessary habitation to create a domicile or legal residence in Elk River.

It could be argued that the mechanistic application of the law of domicile to this case produces a harsh result. The Voter suggests that fairness to him and the circumstances of this case where everyone was in error about the location of the boundary line dictate allowing him to select the proper precinct for voting. Apparently, the rule supported by the Voter is that when a portion of the property owned by a voter, particularly the dwelling house, intersects an election precinct boundary, he or she should have the ability to choose the proper precinct in which to vote. That position is not entirely without support. In Application of Levy, 281 A.D. 137, 120 N.Y.S.2d 450, 452 (3d Div. 1952), the court, in dicta, stated:

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The problem of determining a domicile where the boundary line between two localities passes through the dwelling house of an individual apparently has not been considered by the courts of this State. It has however received attention in the courts of some of our sister States, and in those cases it has been held that the domicile of an individual even in such an extreme situation rests in the locality where the main activities of a home are carried on. Gray v. O'Banion, 23 Cal. App. 468, 138 P. 977, 981; Abington v. North Bridgewater, 23 Pick. 170, 40 Mass. 170; Chernery v. Waltham, 8 Cush. 327, 62 Mass. 327. I doubt if the courts of this State would draw so fine a distinction and in the case of a dwelling house situated upon a boundary line between two election districts I have no doubt that the owner might successfully claim a voting residence in either district. Such a situation, however, is not presented here.

Comment h to Section 18 of the Restatement, Conflict of Laws 2d (ALI 1971) states:

h. Domicil of person with dwelling place cut by boundary

line. A person's domicil of choice should be in the place to which he is most closely related. In the normal situation, a person's domicil of choice is in the political division where his dwelling place is situated.

When the dwelling place is situated upon a dividing line between political divisions, it may be difficult to determine in which of these divisions the domicile is. Usually, the domicile will be in that political division where the major portion of the dwelling place is located, particularly if only an uninhabitable part lies in the other. On rare occasions, however, the preponderant portion of the person's dwelling place may be in one political division, while the bulk of his interests and activities, and also those of his family, are in the other. One such case might be that of a farmer, all of whose tillable land, barn and out-buildings are situated in one political division but the major portion of whose dwelling place is situated in another. A second case might be that of a man who votes and holds public office, attends church, sends his children to school and follows a gainful employment in the political division which contains only the lesser part of his dwelling place. In these cases, it may well be that the person is more closely related to the political division which is the center of his interests and activities than to that which contains the major part of his dwelling place. If this is the case, his domicile of choice should be in the former division. When the boundary line cuts the dwelling place in half, or nearly so, primary weight should be given to the interest and activities of the person and his family and the domicile placed in the political division where most of these interests and activities are centered.

When the person's dwelling place is cut practically in half by the boundary line, or when the preponderant part of his home is in one political division and the bulk of his interests and activities are in another, effect may be given to an expressed desire on his part that his domicile should be in one political subdivision rather than in the other

If, however, one wishes to depart from the generally recognized principles of the common law and adopt a more flexible rule, the Administrative Law Judge agrees with counsel for the Challenger that such a result should be adopted by the Legislature. It could both decide the fields of law to which the relaxed rule of domicile would apply and adopt provisions guaranteeing uniform application of the principle and administrative mechanisms for making it practical.

B.D.C.